

HOUSE BILL REPORT

HB 1644

As Reported by House Committee On:
Judiciary

Title: An act relating to reconveyances of deeds of trust.

Brief Description: Concerning reconveyances of deeds of trust.

Sponsors: Representatives Maxwell, Miloscia, Clibborn, Ormsby, Hurst, Green and Orwall.

Brief History:

Committee Activity:

Judiciary: 2/11/09, 2/19/09 [DPS].

Brief Summary of Substitute Bill

- Allows a title insurance company, title insurance agent, licensed escrow agent, attorney, or agent acting on behalf of one of those entities, to request the trustee to reconvey a deed of trust if the beneficiary fails to do so after a certain period of time.
- Establishes a process for certain title insurance companies and title insurance agents to release a deed of trust when there has not been a reconveyance after a certain period of time and if certain notice requirements are met.
- Makes insurance companies and title insurance agents liable to any party for damages sustained by reason of the issuance, execution, or recording of the release of a deed of trust.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Trudes Tango (786-7384)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Deeds of Trust.

A deed of trust is a type of security interest in real property. Basically, a deed of trust is a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary). The statutes establish who may act as a trustee of a deed of trust.

Reconveying a Deed of Trust.

Upon the satisfaction of the obligation and written request of the beneficiary or the person entitled to reconveyance, the trustee must reconvey the property to the person entitled. The deeds of trust statute does not specify a time frame for reconveyance. However, unless specifically provided for otherwise, deeds of trust are subject to all the laws relating to mortgages on real property.

Under the mortgage laws, when the amount on a mortgage is paid and upon request of any person interested in the property, the mortgagee must execute an instrument in writing acknowledging that the mortgage has been satisfied. Upon request, the written instrument must be recorded in the county where the property is located.

If a mortgagee fails to acknowledge satisfaction of the mortgage within 60 days from the date of the request, the mortgagee is liable to the mortgagor for damages and a reasonable attorney's fee, to be recovered in court.

Summary of Substitute Bill:

Procedures are established for reconveyance of a deed of trust when the beneficiary fails to request a reconveyance or when a trustee fails to reconvey.

If the beneficiary has received payment as specified in the beneficiary's demand letter and fails to request a reconveyance within 30 days of the date payment was received, a title insurance company, title insurance agent, licensed escrow agent, or an attorney (or an agent acting on the behalf of one of those entities) may act as an agent for the person entitled to reconveyance and request the trustee to reconvey the deed of trust.

If the obligation is satisfied by a title insurance company or title insurance agent (or an agent acting on the company's or agent's behalf), and a reconveyance has not occurred within 75 days of the satisfaction, the title insurance company or title insurance agent may prepare, execute, and record a release of the deed of trust upon written request of the grantor and payment of reasonable charges.

Before issuing and recording a release of the deed of trust, the title insurance company or title insurance agent must first give notice to the beneficiary of record and the party to whom the payment was made. The parties that receive notice have 30 days from the date of mailing to send the title insurance company or title insurance agent written objections. The notice

must be sent by first-class mail and identify the deed of trust by the name of the original grantor and any successor in interest on whose behalf payment was made.

The release of the deed of trust must state on the first page that it is being executed and recorded under this particular section of law. It must also set forth:

- the name of the original beneficiary and the name of the beneficiary to whom the payment was made or on whose behalf payment was made;
- the name of the original grantor of the deed of trust;
- the recording reference;
- a recital that the obligation secured by the deed of trust has been paid in full;
- the date and amount of payment and the party that was paid;
- the date of mailing of the notice; and
- a recital that no written objections were received.

A release of the deed of trust may not be recorded before the 30-day period has expired or if a written objection has been received by the title insurance company or title insurance agent from any of the parties to whom notice was sent.

If a fee has not previously been paid to or waived by the trustee, title insurance company, or title insurance agent for services related to the release of deed of trust, then the trustee, title insurance company, or title insurance agent, may charge a reasonable fee for such services.

A title insurance company or title insurance agent is liable to any party for damages that the party sustains by reason of the issuance, execution, or recording of the release. The court may award a reasonable attorney's fee to a prevailing party, except no attorney's fee is allowed if the action is a class action.

Substitute Bill Compared to Original Bill:

The original bill: (1) removed current law which allows a beneficiary or person entitled to request the trustee to reconvey all or part of the property; (2) did not allow a title insurance company, title insurance agent, escrow agent, attorney, or an agent of one of those entities to request reconveyance if the beneficiary failed to request reconveyance after 30 days of receiving payment on the obligation; (3) provided that the beneficiary and trustee could be liable for \$500 plus actual damages for failing to reconvey when requested; and (4) used the term "insurance producer" instead of "insurance agent."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill fixes a problem that arises during the sale or refinance of property. Homeowners have a right to have clear title once the loan on the property is repaid. It can be a complicated process to clear title because there are often multiple loans and multiple lenders involved. If there has not been a reconveyance, it can create difficulties when selling the property. Reconveyance of property once the loan is paid is not automatic. This bill adds another avenue for reconveyance and will clean up the process. It is similar to California's law, which has been very effective. It is often very difficult to get beneficiaries to cooperate and to request reconveyances.

(In support, with amendments) Successor trustees should be added to the bill because a beneficiary could substitute the original trustee with a successor. The bill limits this procedure to title companies that have paid the loan. However, there are other companies that also track and process reconveyances, and they should be included in this bill.

(Opposed) The existing statute provides more latitude and a better remedy for consumers than the bill. When the Deed of Trust Act was adopted, it created a series of conveyances in order to avoid judicial foreclosures. People need to be able to rely on the chain of title. There is a contractual relationship between the lender and borrower that entitles the borrower, rather than a third party, to a reconveyance. If the beneficiary fails to reconvey, the beneficiary can be taken to court. Creating a process of reconveyance through a release of deed of trust exposes the process to potential fraud. The problem is not with the current statute, but with large lenders not requesting reconveyance. The definition of "insurance producer" should be removed and replaced with "title insurance agent."

Persons Testifying: (In support) Representative Maxwell, prime sponsor; and Carrie Tellefsan, Fidelity National Title Group.

(In support, with amendments) Dan Oremrod, Trustee Services, Inc.

(Opposed) Stu Halsan and Gary Kissling, Washington Land Title Association; and Jonelle Wheeler, Escrow Association of Washington.

Persons Signed In To Testify But Not Testifying: None.